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10/664,032	09/17/2003	Koji Takami	100640.52778US	2581
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CROWELL & MORING LLP INTELLECTUAL PROPERTY GROUP P.O. BOX 14300 WASHINGTON, DC 20044-4300			LEFF, STEVEN N	
		ART UNIT		PAPER NUMBER
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/664,032	TAKAMI ET AL.
	Examiner	Art Unit
	Steven Leff	1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on _____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-10 and 13-17 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-10 and 13-17 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 17 September 2003 is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date 2-04.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Claim Objections

- Claims 7-8 are objected to because of the following informalities: The word “shaped” in the phrase “in a half-roll shaped” on line 5 of claim 7 should be changed to shape. Appropriate correction is required.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

- Claims 7-8 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The specification does not provide support for the phrase “in a half-roll shape”. Specifically, page 28 line 1+, and page 29 line 7+ teach that the container bottom is a platform-like shape, with concaves and the top housing includes similar concavities, where the concave shape is similar to nigiri-sushi as is shown in figures 1 and 6. Therefore although the specification teaches roll shaped sushi (pg. 27 line 25+) the specification does not recite a half-roll shaped container. In fact, the specification teaches a platform shape with respect to the container, which contradicts the phrase a “half-roll shaped” container.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- Claims 7-8 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
 - With respect to claims 7-8, the phrase “half-roll shaped” is rejected due to the fact the phrase is unclear as to the shape of the container. For instance the phrase could be

- representative of a roll, which is cut in longitudinal direction or in a horizontal direction, thus determining what the overall shape of a half roll would be. Further the phrase fails to take into account rolls of different sizes with respect to the length as well as the thickness thereof
- The phrase “roll shaped” in claim 7 is indefinite in that it is unclear whether the phrase roll shaped represents a circular roll as is recited on page 27, paragraph 3 or it may merely represent a general definition. For example, applicant recites on page 28 line 1+, and page 29 line 7+ that the container bottom is a platform-like shape, with concaves and the top housing includes similar concavities, where the concave shape is similar to nigiri-sushi as is shown in figures 1 and 6. The container as is defined by the specification teaches a roll shape is a “platform-like shape”, which contradicts the statement “roll shaped.”

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
- Claims 1-4, and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko (jp-200295429) in view of Gonda (jp-5184314) and further in view of Brastad. (4230924) The references are taken as cited in the previous Office action, and further with respect to the

limitations of previous claims 11 and 12. Applicant has incorporated the previous limitations of claims 11-12 into claim 1, thus necessitating the new rejection.

Applicant's arguments filed January 23, 2007, have been fully considered but they are not persuasive. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Further, in response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, Gonda teaches at figure 4, a sushi container for containing frozen sushi, where the container is made of a material which will cause microwave shielding in the areas directly adjacent thereto. (Par. 0011) Gonda further states that the meat product is covered by the container, and is therefore "defended from the exposure by the electron beam." (par. 0020) With respect to figures 3 and 4, Gonda teaches a sushi container which shields a specific portion of the sushi, in this case the sushi-neta, and further teaches with respect to figures 3 and 4, that the open end which is adjacent the rice portion of the sushi is covered by a film. (Par. 0020) The film precludes the sushi and more specifically the grains of rice from adhering to the table of the microwave oven as well as allow the microwaves to pass there through, thus heating the rice part of the sushi, and not the sides or bottom. (par. 0019) Gonda teaches shielding the sides of the container and specifically the sushi-neta itself. Therefore, although applicant teaches a container which shields specifically the sushi-neta within the container, Gonda teaches the inventive concept of shielding the sushi-neta of a piece of sushi for its art recognized and applicants intended function of allowing the meat product of the piece of sushi to defrost due to the radiant heat of the rice of the sushi which is exposed to microwaves.

Applicant argues with respect to figure 2(a) that while Gonda teaches generally "covering" the sushi-neta portion with a material capable of shielding or attenuating the

penetration of an electron beam, that the Gonda figures teach attenuating incident energy which reaches the sushi-neta after passing through the cooked rice part. However it is noted that the rejection to the listed claims is dependant upon the general teachings of Gonda as well as the specific embodiments of figures 3-4, not figure 2(a).

Applicant further argues that Gonda teaches nearly the opposite approach where the cooked rice portion is shielded from the covering direction, while there is no suggestion of any shielding of the sushi-neta from direct irradiation coming from the remaining bottom or side directions, whether opening face up (Fig. 3a) or open face down (Fig. 3b). It is noted that example 2 is drawn to figure 2, not figures 3-4, which form the basis of the rejection. Further, it is noted that applicant argues on page 18 of the remarks on line 4+ that Gonda does teach microwave shielding for a specific purpose. With respect to figures 3-4, Gonda teaches that the defrosting and heating of the rice part are performed within the container, through the open top of the container and that the sushi-neta of the sushi is covered with the container (1) where the container itself contains microwave shielding material and thus the sushi-neta is “defended from exposure by the electron beam”. (par. 0020) Gonda continues by stating that the open end may include a film which precludes the sushi and more specifically the grains of rice from adhering to the table of the microwave oven as well as allow the microwaves to pass there through, thus heating the rice part of the sushi, and not the sides or bottom. (par. 0019)

Therefore, Gonda teaches a microwave shielding film, which is formed on the surface of the sushi housing part at least in the part facing the ingredients, a bottom cover which has a sushi retaining part to support the sushi-rice, and where microwaves can penetrate the bottom cover to reach the sushi-rice.

Therefore, it would have been obvious to one of ordinary skill in the art to expect that the container as taught by Gonda, would produce the same quality of sushi, due to the fact that the rearrangement of parts or the orientation of parts would not change the overall function of the parts of Gonda, which as discussed above provide a container which allows for the sushi-neta portion of sushi to be defrosted due to the radiant heat of the rice which is contained therewith and is exposed to microwave radiation. Therefore, applicant does not provide a patentable distinction from the referenced invention.

Kaneko is relied upon to teach that it was well known in the art to provide a container for housing frozen sushi with shaped sushi-rice and sushi-neta (a piece of fish)

such as nigiri-sushi and bo-sushi, wherein the container includes a main housing body having at least one sushi housing parts protruding upward matching the shape of the sushi, the main housing body being open downward, and a bottom cover which corresponding sushi retaining parts which can be engaged with the fringe face of the main housing body. Thus, although Gonda does not teach the specific configuration with respect to the shape and appearance details with respect to the container itself, Kaneko teaches a container for housing sushi, where the sushi may be refrigerated for display, (par. 0023) and further includes a graphic display which imitates the sushi packages within the container. (par. 0023)

Therefore, in response to applicant's argument that the technical field of Kaneko is different from applicants, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. It is further noted that although Kaneko does not state that the container may be placed in an environment which is 32°F. or below, it would have been expected to function in such conditions.

Further, Kaneko is relied upon to establish the fact that it has been well known in the art to provide a container which houses individual sushi pieces, and further where the container includes a graphic display which imitates the sushi housed within, and also includes a cover which can be engaged with a peripheral part of the opening of the main housing body.

Therefore, it would have been obvious to one of ordinary skill in the art to provide a container as taught by Kaneko which houses frozen sushi, includes a graphic display which imitates the sushi housed within, and also includes a cover which can be engaged with a peripheral part of the opening of the main housing body. Further, due to the fact that Gonda teaches the specifics with respect to a frozen sushi container which includes microwave shielding of the sushi-neta, and Kaneko teaches the specifics with respect to the sushi containers appearance, the above teachings provide motivation to combine the teachings of Gonda and Kaneko in order to produce a frozen sushi container, not only to defrost the sushi in a more specific manner, but further to provide a container which is more appealing to the consumer thus increasing sales of the sushi product. Thus applicant does not provide a patentable distinction over the prior art.

Further with respect to applicant's argument that neither Kaneko nor Gonda provide any teachings with respect to the shielding being provided by metal evaporation, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). It is noted that Brastad is not cited with regard to the microwave shielding. This rejection has been established by Kaneko and Gonda, whereas Brastad teaches the fact that microwave shielding has been applied to containers specifically through the use of metal evaporation. With respect to Brastad, applicant argues that one of ordinary skill in the art would have found no motivation to combine the reference with Kaneko and Gonda, however Brastad clearly states in the abstract that "various degrees of microwave transparency can be incorporated into the metallic coating so that a desired or preferred amount of browning is realized by the time that the particular item of packaged food is fully heated or cooked." Therefore, Brastad not only teaches the application of shielding material in a specific location with respect to a food item, which is the same as that taught by both Kaneko and Gonda, but further specifically teaches that the shielding material is applied via metal evaporation.

- Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko (jp-200295429) in view of Gonda (jp-5184314), and Brastad (4230924) as applied to claim 1 above, and further in view of Imamura (jp-11290206). The references are taken as cited in the previous Office action.

With respect to claim 5, although neither Kaneko, Gonda nor Brastad teach that the protruding parts are arranged in two rows parallel to the long sides of the rectangle, where each sushi housing part is parallel to each other and oblique to the sides of the rectangle, the combination of Kaneko, Gonda, and Brastad teach the use of microwave shielding within a sushi container and more specifically where the microwave shielding has been applied to containers specifically through the use of metal evaporation.

Imamura (jp-411290206) teaches two parallel rows, which are slanted (fig. 3), and further teaches that microwave shielding film located above the topping part of the sushi, which is the same as is taught by Kaneko, Gonda, and Brastad.

Therefore, it would have also been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combined Kaneko, Gonda, Brastad and Imamura, in order to produce a sushi container which is specifically sized and shaped to

cook specific sized and shaped sushi pieces within the container due to microwave shielding which has been applied to the container via metal evaporation. Where the container further includes parallel sushi housings which are angled, and oblique to the sides of the rectangle, in order to provide a container which is not only more appealing due to a specific design choice due to the slanted design of the sushi housings but also in order to provide a specifically shaped container for a specific type and amount of a sushi product which are all factors when determining the amount of heating required.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

With respect specifically to claim 5, applicant argues that Imamura does not provide any teachings with respect to the microwave shielding arrangement, however it is noted that Imamura specifically teaches in the abstract the use of an "upper lid made of a high frequency shielding material." It is further noted that Imamura is relied upon to support the motivation as is taught by Kaneko, Gonda and Brastad, to provide a container, which includes two parallel rows, which are slanted, (fig. 3) thus applicant does not provide a patentable teaching, over the prior art, with respect to the arrangement of the individual pieces of sushi within the container.

- Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko (jp-200295429) in view of Gonda (jp-5184314) and Brastad (4230924) as applied to claim 1 above, and further in view of Urashima (jp-410290673). The references are taken as cited in the previous Office action.

Although neither Kaneko, Gonda nor Brastad disclose the specific placement of the non-raw fish pieces in the corner parts of the rectangle in order to expose certain pieces to more intense microwaves, the combination of Kaneko, Gonda, and Brastad teach the use of microwave shielding within a sushi container and more specifically where the microwave shielding has been applied to containers specifically through the use of metal evaporation. Urashima (jp-410290673) discloses voile shrimp, and egg, a salmon, and a conger eel in crevice labeled 16a in fig. 2 and 3 and tuna or cuttlefish in the crevices labeled 16b in figs. 2 and 3, for their art recognized and applicants intended purpose of heating specific sushi types with a specific amount of heat due to variables which affect this heating such as location within the container.

Therefore, it would have also been obvious to one of ordinary skill in the art at the time of the invention by the applicant to have combined Kaneko, Gonda, Brastad and Imamura, in order to produce a sushi container which is specifically sized and shaped to cook specific sized and shaped sushi pieces within the container due to microwave shielding which has been applied to the container via metal evaporation. Therefore, one of ordinary skill in the art at the time of the invention by the applicant would have been motivated to produce a frozen sushi container in which the placement of the particular type of sushi toppings would have been of importance for thawing purposes.

Regarding applicant's arguments that Urashima fails to teach the features of claim 6, it is noted that the motivation to combine the teachings of Gonda and Kaneko has been established. With respect to claim 6, applicant argues that Urashima does not provide any teachings with respect to the specific arrangement of the sushi pieces. However, it is noted that Urashima specifically teaches voile shrimp, egg, a salmon, and a conger eel in crevices labeled 16a in fig. 2 and 3 and tuna or cuttlefish in the crevices labeled 16b in figs. 2 and 3 for their art recognized and applicant's intended function of placing the sushi within the container in a manner which is dependent upon the specific type of sushi-neta for thawing purposes. Urashima further states that the sushi is "arranged in the container orderly by difficulty of the stock in thawing, in line with the field intensity distribution of the microwaves, so that they are thawed evenly." (abstract) Therefore, Urashima, in combination with Kaneko, Gonda, and Brastad does teach the limitations with respect to claim 6.

- Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaneko (jp-200295429) in view of Gonda, (jp-5184314) as applied to claim 1 above, and further in view of Mast (6054698). The references are taken as cited in the previous Office action.

With respect to claims 7 and 8, although neither, Kaneko, or Gonda disclose a microwave shielding film, which includes interrupted portions. The combination of Kaneko, and Gonda teach the use of microwave shielding within a sushi container for heating any kind of sushi. In addition, Mast (6054698) discloses a "top surface of the container is adapted to receive a shield of aluminum foil or the like having openings, e.g., holes, crisscross designs, etc. therethrough." (col.3 line 49) The unshielded areas provide areas, which "permit relatively large amounts of heat to penetrate the container." (col.3 line 21)

Thus one of ordinary skill in the art would have been motivated to combine the teachings of Kaneko, Gonda and Mast, in order to produce a sushi container which allowed for separating individual sushi pieces within the container, and further provided interrupted shielding in order to allow the sushi pieces to heat at a rate which is preferable to the consumer, and only in specific spots with respect to the overall container, as is taught by Kaneko and Gonda. The interrupted shielding would allow the container to more specifically focus the shielding thus providing a more efficient container, and further would provide for a more cost effective container since the amount of shielding overall would be reduced. Therefore, it would have been obvious to include interrupted shielding in order to allow the retailer to provide the consumer with a more effective and cost sensible product.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding claims 7 and 8, applicant argues that Mast fails to teach a "half-roll shape" for housing the individual pieces of sushi within the container. However it is noted that Mast was cited with regards to the limitation which recited providing interrupted electrical shielding elements, which allow for microwaves to pass through the openings of the shielding element, and a bottom cover, which does not provide electrical shielding. It is further noted that Kaneko teaches a container for sushi, which includes half-roll shaped protruding parts, as is evidenced by figure 2. Figure 2 depicts the protruding parts with a rounded top, however the protruding parts extend directly down into the bottom in a linear fashion, and thus provide a cover, which includes half-roll shaped protruding parts for housing the sushi within the container.

Therefore, Mast does teach the limitations with respect to claim 7, as was stated in the previous Office action, and thus applicant does not provide a patentable teaching over the prior art.

- Claims 9 and 10 are rejected under 35 USC 103 (a) as being unpatentable over Kaneko (jp-200295429) in view of Gonda. (jp-5184314) This rejection is taken as cited in the previous Office Action.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven Leff whose telephone number is (571) 272-6527. The examiner can normally be reached on Mon-Fri 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571)272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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KEITH HENDRICKS
PRIMARY EXAMINER